

105TH CONGRESS  
1ST SESSION

# S. 449

To prohibit the restriction of certain types of medical communications between a health care provider and a patient.

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## IN THE SENATE OF THE UNITED STATES

MARCH 17, 1997

Mr. KYL (for himself, Mr. WYDEN, Mr. KENNEDY, and Mr. HUTCHINSON) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To prohibit the restriction of certain types of medical communications between a health care provider and a patient.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Patient Right to Know Act”.

6       (b) FINDINGS.—Congress finds the following:

7               (1) Patients need access to all relevant informa-  
8       tion to make appropriate decisions about their  
9       health care.

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1           (2) Open medical communications between  
 2           health care providers and their patients is a key to  
 3           prevention and early diagnosis and treatment, as  
 4           well as to informed consent and quality, cost-effec-  
 5           tive care.

6           (3) Open medical communications are in the  
 7           best interests of patients.

8           (4) Open medical communications must meet  
 9           applicable legal and ethical standards of care.

10          (5) It is critical that health care providers con-  
 11          tinue to exercise their best medical, ethical, and  
 12          moral judgment in advising patients without inter-  
 13          ference from health plans.

14          (6) The offering and operation of health plans  
 15          affect commerce among the States.

16          (c) PURPOSE.—It is the purpose of this Act to estab-  
 17          lish a Federal standard that protects medical communica-  
 18          tions between health care providers and patients.

19       **SEC. 2. PROHIBITION OF INTERFERENCE WITH CERTAIN**  
 20               **MEDICAL COMMUNICATIONS.**

21          (a) PROHIBITION.—

22               (1) GENERAL RULE.—The provisions of any  
 23               contract or agreement, or the operation of any con-  
 24               tract or agreement, between an entity operating a  
 25               health plan (including any partnership, association,

1 or other organization that enters into or administers  
2 such a contract or agreement) and a health care  
3 provider (or group of health care providers) shall not  
4 prohibit or restrict the provider from engaging in  
5 medical communications with his or her patient.

6 (2) NULLIFICATION.—Any contract provision or  
7 agreement described in paragraph (1) shall be null  
8 and void.

9 (3) PROHIBITION ON PROVISIONS.—Effective on  
10 the date described in section 5, a contract or agree-  
11 ment described in paragraph (1) shall not include a  
12 provision that violates paragraph (1).

13 (b) RULES OF CONSTRUCTION.—Nothing in this Act  
14 shall be construed—

15 (1) to prohibit the enforcement, as part of a  
16 contract or agreement to which a health care pro-  
17 vider is a party, of any mutually agreed upon terms  
18 and conditions, including terms and conditions re-  
19 quiring a health care provider to participate in, and  
20 cooperate with, all programs, policies, and proce-  
21 dures developed or operated by a health plan to as-  
22 sure, review, or improve the quality and effective uti-  
23 lization of health care services (if such utilization is  
24 according to guidelines or protocols that are based  
25 on clinical or scientific evidence and the professional

1 judgment of the provider) but only if the guidelines  
 2 or protocols under such utilization do not prohibit or  
 3 restrict medical communications between providers  
 4 and their patients; or

5 (2) to permit a health care provider to mis-  
 6 represent the scope of benefits covered under a  
 7 health plan or to otherwise require the plan to reim-  
 8 burse providers for benefits not covered under the  
 9 plan

10 (c) ENFORCEMENT.—

11 (1) STATE AUTHORITY.—Except as otherwise  
 12 provided in this subsection, each State shall enforce  
 13 the provisions of this Act with respect to health in-  
 14 surance issuers that issue, sell, renew, or offer  
 15 health plans in the State.

16 (2) ENFORCEMENT BY SECRETARY.—

17 (A) IN GENERAL.—Effective on January 1,  
 18 1998, if the Secretary, after consultation with  
 19 the chief executive officer of a State and the in-  
 20 surance commissioner or chief insurance regu-  
 21 latory official of the State, determines that the  
 22 State has failed to substantially enforce the re-  
 23 quirements of this Act with respect to health in-  
 24 surance issuers in the State, the Secretary shall

1 enforce the requirements of this Act with re-  
2 spect to such State.

3 (B) ENFORCEMENT THROUGH IMPOSITION  
4 OF CIVIL MONEY PENALTY.—

5 (i) IN GENERAL.—With respect to a  
6 State in which the Secretary is enforcing  
7 the requirements of this Act, an entity op-  
8 erating a health plan in that State that  
9 violates subsection (a) shall be subject to a  
10 civil money penalty of up to \$25,000 for  
11 each such violation.

12 (ii) PROCEDURES.—For purposes of  
13 imposing a civil money penalty under  
14 clause (i), the provisions of subparagraphs  
15 (C) through (G) of section 2722(b)(2) of  
16 the Health Insurance Portability and Ac-  
17 countability Act of 1996 (42 U.S.C.  
18 300gg-22(b)(2)) shall apply except that the  
19 provisions of clause (i) of subparagraph  
20 (C) of such section shall not apply.

21 (3) SELF-INSURED PLANS.—Effective on Janu-  
22 ary 1, 1998, the Secretary of Labor shall enforce the  
23 requirements of this section in the case of a health  
24 plan not subject to State regulation by reason of sec-

1       tion 514(b) of the Employee Retirement Income Se-  
 2       curity Act of 1974 (29 U.S.C. 1144(b)).

3           (4) RULE OF CONSTRUCTION.—Nothing in this  
 4       Act shall be construed to affect or modify the provi-  
 5       sions of section 514 of the Employee Retirement In-  
 6       come Security Act of 1974 (29 U.S.C. 1144).

7       (d) NO PREEMPTION OF MORE PROTECTIVE  
 8       LAWS.—A State may establish or enforce requirements  
 9       with respect to the protection of medical communications,  
 10      but only if such requirements are equal to or more protec-  
 11      tive of such communications than the requirements estab-  
 12      lished under this section.

13   **SEC. 3. DEFINITIONS.**

14      In this Act:

15           (1) HEALTH CARE PROVIDER.—The term  
 16      “health care provider” means anyone licensed or cer-  
 17      tified under State law to provide health care services  
 18      who is operating within the scope of such license.

19           (2) HEALTH INSURANCE ISSUER.—The term  
 20      “health insurance issuer” has the meaning given  
 21      such term in section 2791(b)(2) of the Public Health  
 22      Service Act (as added by the Health Insurance Port-  
 23      ability and Accountability Act of 1996).

24           (3) HEALTH PLAN.—The term “health plan”  
 25      means a group health plan (as defined in section

1       2791(a) of the Public Health Service Act (as added  
 2       by the Health Insurance Portability and Account-  
 3       ability Act of 1996)) and any individual health in-  
 4       surance (as defined in section 2791(b)(5)) operated  
 5       by a health insurance issuer and includes any other  
 6       health care coverage provided through a private or  
 7       public entity. In the case of a health plan that is an  
 8       employee welfare benefit plan (as defined in section  
 9       3(1) of the Employee Retirement Income Security  
 10      Act of 1974), any third party administrator or other  
 11      person with responsibility for contracts with health  
 12      care providers under the plan shall be considered,  
 13      for purposes of enforcement under this section, to be  
 14      a health insurance issuer operating such health plan.

15           (4) MEDICAL COMMUNICATION.—

16                   (A) IN GENERAL.—The term “medical  
 17                   communication” means any communication  
 18                   made by a health care provider with a patient  
 19                   of the health care provider (or the guardian or  
 20                   legal representative of such patient) with re-  
 21                   spect to—

22                           (i) the patient’s health status, medical  
 23                           care, or legal treatment options;

1                   (ii) any utilization review require-  
 2                   ments that may affect treatment options  
 3                   for the patient; or

4                   (iii) any financial incentives that may  
 5                   affect the treatment of the patient.

6                   (B) MISREPRESENTATION.—The term  
 7                   “medical communication” does not include a  
 8                   communication by a health care provider with a  
 9                   patient of the health care provider (or the  
 10                  guardian or legal representative of such patient)  
 11                  if the communication involves a knowing or will-  
 12                  ful misrepresentation by such provider.

13                  (5) SECRETARY.—The term “Secretary” means  
 14                  the Secretary of Health and Human Services.

15 **SEC. 4. EFFECTIVE DATE.**

16                  This Act shall take effect on the date of enactment  
 17                  of this Act, except that section 2(a)(3) shall take effect  
 18                  180 days after such date of enactment.

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